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3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF NEW YORK

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5 ATLANTIS INFORMATION TECHNOLOGY, GmbH,
6 Plaintiff,
7 Case No.
8 - against - 06-CV-3921
9 (ADS) (WDW)
10 CA, INC.,
11 Defendant.

12 -----x
13 January 24, 2008
14 10:05 a.m.
15
16
17 DEPOSITION of ALEXANDER GAUGLER, taken by
18 Defendant pursuant to Notice, held at the
19 offices of Foley & Lardner LLP, 90 Park
20 Avenue, New York, NY 10016-1314, before
21 Donna A. Metz, a Registered Professional
22 Reporter and Notary Public in and for the
23 State of New York.

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<p>1 Alexander Gaugler 2 going to need you to tell me what the date is 3 associated with that high level qualifier you 4 mentioned. 5 A. 1998, 08/24. 6 Q. Okay. And then you said so on and 7 so on. 8 A. Entries and exits, or exits and 9 entries, rather. 10 Q. Is there more than one entry on this 11 chart? 12 A. Yes. 13 Q. How many such entries are there? 14 Are there a lot? 15 A. It's a lot. 16 Q. Well, how about you point out the 17 first one to me so I know what they look 18 like. 19 Let's start there. 20 A. Your question is since the version 2 21 or since ever? What was the question? 22 Q. There is a list of all major 23 enhancements. 24 A. Yes. 25 Q. So any major enhancement on this</p>	<p>90</p> <p>1 Alexander Gaugler 2 is only one entry that is in existence. 3 So the first might be the last. 4 Q. Can you find that out, now? 5 Is it likely to be 1997? 6 A. 1997, 09/12 is entry SET. 7 Q. Are you finished with your answer? 8 A. Yes. 9 Q. Does CA have any control over the 10 numbers Atlantis assigns to its different 11 versions of E/NAT? 12 A. No. 13 Q. Has Atlantis at any time started 14 work on a release 3.0 of E/NAT? 15 A. Yes. 16 Q. When did Atlantis start work on 17 release 3.0? 18 A. I have to look at my notes. 19 Q. What is your best estimate? 20 A. It was around 2000. 21 Q. What was the planned major 22 enhancement in functionality between the 2.0 23 series of E/NAT and the 3.0 series of E/NAT? 24 A. You are asking for the 25 functionality? What are you asking for?</p>
<p>91</p> <p>1 Alexander Gaugler 2 chart. 3 A. So the member conversion table was 4 one. 5 Q. What is the date on that? 6 A. 1997, 09/12. 7 And in 1997, 09/12, again, the entry 8 SET. 9 You were asking for the first time 10 we introduced as the a new user exit, 1997, 11 12/30. 12 Q. What is the most recent new user 13 exit? 14 A. If I did not miss anything, 1998, 15 10/08. 16 Q. 1998, 10/08 is what? The most 17 recent exit? 18 A. New exit, yes. 19 Q. I honestly forget whether I asked 20 you this. 21 What is the most recent entry? 22 You earlier were talking about exits 23 and entries; correct? 24 A. I am not absolutely sure, but I 25 think there is only one entry and it's -- it</p>	<p>93</p> <p>1 Alexander Gaugler 2 Q. I was asking, what were the big 3 improvements planned for release 3.0? 4 A. Well, one was to get a final 5 structure that becomes independent from the 6 database. 7 Another one was to remove some 8 limits in our table definitions. 9 And another one was package shipment 10 using utility only. 11 MR. BERNSTEIN: Loading? 12 THE INTERPRETER: Only. 13 Q. What is the current status of 14 release 3.0? 15 A. We have stopped it. 16 Q. When did you stop it? 17 A. Again, between 2002 and '03, I 18 think. 19 Q. Why did you stop it? 20 A. Well, because of the problems with 21 CA. 22 Q. What do you mean the problems at 23 CA? Do you mean the disputes with CA over 24 payment of royalties? 25 A. Yes.</p>

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<p>1 Alexander Gaugler</p> <p>2 Q. And did you tell CA that you were</p> <p>3 stopping development for that reason?</p> <p>4 A. Not that I am aware of.</p> <p>5 Q. Not that you are aware of?</p> <p>6 A. Yes, not that I am aware of.</p> <p>7 Q. And you had previously told CA that</p> <p>8 Atlantis was working on development of 3.0;</p> <p>9 right?</p> <p>10 A. Right.</p> <p>11 Q. Well, why didn't you tell them that</p> <p>12 you were stopping?</p> <p>13 A. I see no need to tell them.</p> <p>14 Q. Why in your mind did the problems</p> <p>15 with CA justify stopping development of</p> <p>16 release 3.0?</p> <p>17 A. Well, we had expected a decrease in</p> <p>18 revenue and an increase in costs.</p> <p>19 Q. Why a decrease in revenue?</p> <p>20 A. The less business with CA is less</p> <p>21 revenue for us.</p> <p>22 Q. Why did you think -- you mean by</p> <p>23 less business from CA, you mean less dollars,</p> <p>24 fewer dollars paid by CA to Atlantis, or do</p> <p>25 you mean that CA was itself entering into</p>		<p>1 Alexander Gaugler</p> <p>2 to use a certain amount of money to pay</p> <p>3 lawyers, that money was not available to</p> <p>4 pay for development, is that what you're</p> <p>5 saying?</p> <p>6 A. Yes, that was one reason, that I</p> <p>7 probably will have to pay a lot of money for</p> <p>8 lawyer costs. That was one reason.</p> <p>9 And the other reason is that my time</p> <p>10 is decreasing to participate.</p> <p>11 Q. Because you were spending more time</p> <p>12 on trying to resolve the dispute with CA?</p> <p>13 (Witness gestures.)</p> <p>14 MR. JENSEN: You have to say yes.</p> <p>15 A. Yes.</p> <p>16 MR. JENSEN: I don't know want to</p> <p>17 interrupt your train of thought.</p> <p>18 MR. ZABRISKIE: I've got one more</p> <p>19 exhibit and it will be five minutes.</p> <p>20 MR. JENSEN: It's already 1:30 and</p> <p>21 we need a break.</p> <p>22 MR. ZABRISKIE: Let's just do this.</p> <p>23 Mark that as Defendant's Exhibit 4.</p> <p>24 (Whereupon, copy of two-page e-mail</p> <p>25 chain, Bates numbered A 014046 and</p>	
<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	95		97
<p>1 Alexander Gaugler</p> <p>2 fewer licenses with end users for E/NAT?</p> <p>3 A. Well, most revenue comes from</p> <p>4 licenses. So that was the expectation.</p> <p>5 Q. We are not communicating.</p> <p>6 Let's go at it this way.</p> <p>7 What were the increased costs that</p> <p>8 you were expecting because of the problems</p> <p>9 with CA?</p> <p>10 A. For example, lawyers.</p> <p>11 Q. So why did having to pay lawyers</p> <p>12 justify stopping development of 3.0?</p> <p>13 A. Would you repeat that question?</p> <p>14 MR. ZABRISKIE: Could you read it</p> <p>15 back?</p> <p>16 (Whereupon, the requested portion</p> <p>17 was read back by the reporter.)</p> <p>18 A. Like I previously told you,</p> <p>19 increased costs.</p> <p>20 Q. I know, but why in your mind did</p> <p>21 having to pay lawyers justify stopping</p> <p>22 development of 3.0?</p> <p>23 A. I do not get what you mean to say.</p> <p>24 Q. Let me ask you this:</p> <p>25 Are you saying, sir, because you had</p>		<p>1 Alexander Gaugler</p> <p>2 A 014047, was marked as Defendant's</p> <p>3 Exhibit 4 for identification, as of this</p> <p>4 date.)</p> <p>5 Q. I am showing you, Mr. Gaugler, what</p> <p>6 has been marked Exhibit 4, a two-page e-mail</p> <p>7 chain Bates numbered A014046 and A 014047.</p> <p>8 Would you review it, please?</p> <p>9 (Witness perusing document.)</p> <p>10 A. Did you ask me a question?</p> <p>11 Q. No. I asked you to review it.</p> <p>12 I will ask you a question.</p> <p>13 A. Okay.</p> <p>14 Q. Have you had a chance to review</p> <p>15 Exhibit 4, now?</p> <p>16 A. Not fully.</p> <p>17 Q. Well, please review it fully.</p> <p>18 I am going to really ask you about</p> <p>19 the e-mail at the top of the first page and</p> <p>20 the one below it, but take whatever time you</p> <p>21 need.</p> <p>22 A. Okay.</p> <p>23 Q. Do you recall sending and receiving</p> <p>24 the e-mails that are part of this chain?</p> <p>25 A. I recall the contents, yes.</p>	